Decision for dispute CAC-UDRP-100934

Case number	CAC-UDRP-100934
Time of filing	2015-03-03 13:04:56
Domain names	enterprisecarshre.com, enterprisesharecar.com, wwwenterprisecarshare.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Enterprise Holdings, Inc.

Complainant representative

Organization	Harness, Dickey & Pierce, PLC

Respondent

Name	wangxiaolei

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings related to the disputed domain names, that would be pending or decided.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademarks:

- CTM (Word and Device) No. 010927119 ENTERPRISE CARSHARE, registered 10 October 2012 in International Class 39.
- United States Trademark (Word and Device) No. 4,273,517 ENTERPRISE CARSHARE issued 8 January 2013 in International Class 39.

The Complainant is the licensor of the ENTERPRISE CARSHARE trademarks for use in connection with a car share program. Complainant's licensee operates an online car share web site at www.enterprisecarshare.com and www.enterprisecarshare.co.uk.

FACTUAL BACKGROUND

The Complainant has been engaged in the car rental business since 1963.

The Complainant alleges to be one of the largest vehicle rental companies in the world. It operates more than 7.000 offices

around the world. First Complainant has expanded its business to Europe in 1994 and has operations in the United Kingdom, Germany and Ireland.

The Complainant is the owner of the above-mentioned trademarks.

All these trademarks are notably registered for vehicle rental services in international class 39 “Vehicle rental and leasing services, and reservation services for the rental and leasing of vehicles”.

The Complainant is also the owner of numerous ENTERPRISE trademarks for vehicle rental services in many countries around the world.

The Respondent, Wangxiaolei, domiciled in China, registered the domain names <enterprisecarshre.com>, <enterprisesharecar.com>, and <wwwenterprisecarshare.com> on 21 October 2014.

The ENTERPRISE CARSHARE trademarks which have been filed and registered prior to the registration of the domain names <enterprisecarshre.com>, <enterprisesharecar.com>, and <wwwenterprisecarshare.com>.

Each of these three domain names resolve to parking pages providing links related to car rental.

PARTIES CONTENTIONS

A. The Complainant

1. Confusing similarity.

The Complainant asserts that the domain names <enterprisecarshre.com>, <enterprisesharecar.com>, and <wwwenterprisecarshare.com> are confusingly similar to its trademarks and appropriates its trademarks.

The Complainant contends that the domain name <enterprisecarshre.com> is confusingly similar to Complainant’s registered ENTERPRISE CARSHARE trademarks. The Complainant asserts that the <enterprisecarshre.com> domain name fully incorporates Complainant’s ENTERPRISE CARSHARE trademarks, merely deleting the “a” from SHARE, to mimic a common typographical error, deleting the space between ENTERPRISE and CARSHARE, and adding the generic top level domain identifier, “.com” at the end. The Complainant claims that deletion of a single character is typo squatting and evidence of Respondent’s intent to use a domain name confusingly similar to Complainant’s mark. The Complainant contends that this is further evidenced by the fact that ENTERPRISE CARSHARE Trademarks appear spelled correctly on the www.enterprisecarshre.com webpage.

The Complainant asserts that the domain name <enterprisesharecar.com> is confusingly similar to Complainant’s registered ENTERPRISE CARSHARE trademarks. The Complainant attests that the <enterprisesharecar.com> domain name fully incorporates Complainant’s ENTERPRISE CARSHARE trademarks, merely reversing the ordering of CAR and SHARE, deleting the space between ENTERPRISE and CARSHARE, and adding the generic top level domain identifier, “.com” at the end.

The Complainant contends that the domain name <wwwenterprisecarshare.com> is confusingly similar to Complainant’s registered ENTERPRISE CARSHARE trademarks. The Complainant attests that the <wwwenterprisecarshare.com> domain name fully incorporates Complainant’s ENTERPRISE CARSHARE trademarks, merely adding the “www” prefix commonly used when manually entering domain names, deleting the period that would typically follow the “www” prefix, deleting the space between ENTERPRISE and CARSHARE, and adding the generic top level domain identifier, “.com” at the end.

The Complainant contends that the incorporation of a trademark in its entirety into a domain name is sufficient to establish that the domain name is identical or confusingly similar to a registered trademark.

2. Rights to or Legitimate Interests.

The Complainant asserts that the domain names <enterprisecarshre.com>, <enterprisesharecar.com>, and <wwwenterprisecarshare.com> have been registered without rights or legitimate interests.

The Complainant asserts that on 21 February 2015 the web sites at the <enterprisecarshre.com>, <enterprisesharecar.com>, and <wwwenterprisecarshare.com> domain names resolved to web pages made up of lists of “Related Links” offering car rental services, including those of Complainant’s licensee and/or its competitors.

The Complainant contends that the Respondent’s use of the domain names <enterprisecarshre.com>, <enterprisesharecar.com>, and <wwwenterprisecarshare.com>, is neither a bona fide offering of goods or services pursuant to Paragraph 4(c)(i) of the Policy nor a legitimate noncommercial or fair use pursuant to Paragraph 4(c)(iii) of the Policy.

The Complainant asserts that neither the WHOIS records nor the web sites give any indication that the Respondent is known as, operates a business as, or advertises as “ “Enterprise Car Shre,” “Enterprise Share Car,” or “WWW Enterprise Car Share.”

The Complainant asserts that it cannot be found, neither on the WHOIS data nor on the web sites, that the Respondent has been commonly known by any of these names and thus has acquired any legitimate rights in the <enterprisecarshre.com>, <enterprisesharecar.com>, and <wwwenterprisecarshare.com> domain names.

The Complainant attests that it has not licensed or otherwise permitted the Respondent to use its ENTERPRISE CARSHARE trademarks in connection with car share services or any other goods or services or to apply for any domain name incorporating the ENTERPRISE CARSHARE trademarks.

The Complainant contends that the Respondent is not making any legitimate noncommercial or fair use of the disputed domain names as they resolve to web pages that are a generic type of web page commonly used by domain name owners seeking to monetize their domain names through “click-through” fees.

The Complainant asserts that the Respondent is attempting to use the <enterprisecarshre.com>, <enterprisesharecar.com>, and <wwwenterprisecarshare.com> web pages to drive Internet traffic to web sites when Internet users are trying to reach the Enterprise Carshare web sites. The Complainant contends that such use constitutes a lack of rights or legitimate interest in the disputed domain names under Paragraphs 4(c)(i) and (ii) of the Policy. The Complainant asserts that Respondent’s typo-squatting provides additional evidence that the Respondent lacks rights and legitimate interests.

The Complainant contends that the burden of proof shifts to the Respondent to show it does have rights or legitimate interests.

3. Registered and used in Bad Faith.

The Complainant contends that the Respondent intends through the disputed domain names to trade upon the goodwill associated with Complainant’s ENTERPRISE CARSHARE trademarks for car share services.

The Complainant asserts that the Respondent is deliberately using domain names that are confusingly similar to Complainant’s ENTERPRISE CARSHARE trademarks to attract, for commercial gain, Internet users to its web sites, by creating a likelihood of confusion with Complainant’s ENTERPRISE CARSHARE trademarks as to the source, sponsorship, affiliation or endorsement of its web sites and the services offered at such web sites

The Complainant asserts that the business model based upon use of infringing domain names to attract users to Respondent’s web sites is clear evidence that the Respondent registered and is using the <enterprisecarshre.com>, <enterprisesharecar.com>, and <wwwenterprisecarshare.com> domain names for commercial gain to capitalize on the goodwill that Enterprise Holding Inc. has developed in its ENTERPRISE CARSHARE trademarks.

The Complainant contends that <enterprisecarshre.com> and <wwwenterprisecarshare.com> domain names can be considered typo squatting and thus evidence of Respondent’s bad faith in registering and using the disputed domain names.

The Complainant claims that the Respondent has attempted to create a domain name that would take advantage of typographical errors made by Internet users searching for Complainants goods and service.

The Complainant contends that Respondent's bad faith is also clearly evident from the fact that the web page for <enterprisecarshre.com> includes a link to the real Enterprise Carshare web page and for which Enterprise Carshare must pay a click-through fee if that link is used.

The Complainant attests that the disclaimer showed on the websites resolving from the disputed domain names, states that the links displayed are generated automatically by a third-party and that the domain owner and service provider have no relationship with the advertisers.

The Complainant contends that this disclaimer cannot prevent the domain name owner from being responsible for content appearing on the web site. The Complainant finds support in Villeroy & Boch AG v. Mario Pingerma, D2007-1912 (WIPO 14 February 2008).

B. Respondent

No administratively compliant response has been filed.

RIGHTS

To prevail in the proceedings under the Uniform Domain Name Dispute Resolution Policy, the Complaint must show that the three requirements set forth in Paragraph 4(a) of the Policy are met. Those requirements are:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the domain name has been registered and is being used in bad faith.
Likewise, under Paragraph 4 (c) of the Policy, the Respondent can demonstrate its rights and legitimate interests in the disputed domain name in his response to the complaint by proving, among others, the circumstances mentioned under this paragraph of the Policy.

A. Domain name is identical or confusingly similar to a trademark of the Complainant
The Complainant has clearly established prior rights in the Trademarks ENTERPRISE CAR SHARE by appending evidence of a Community trademark registration and a United States Trademark registration. The above-mentioned trademarks are notably registered for car rental services in international class 39 and are used to designate such services. Complainant's licensee operates an online car share web site at www.enterprisecarshare.com and www.enterprisecarshare.co.uk.

The domain names <enterprisecarshre.com>, <enterprisesharecar.com>, and <wwwenterprisecarshare.com> are entirely composed with variations on the trademarks ENTERPRISE CARSHARE.

This is a typical typo squatting practice targeting Internet users who incorrectly type a website address into their web browser.

The domain name <enterprisecarshre.com> copies the trademark minus the letter "a" in the word "share".

The domain name <enterprisesharecar.com> switches the words "car" and "share".

The domain name <wwwenterprisecarshare.com> integrates the prefix "www" to the trademark.

Therefore, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark. The condition of the Paragraph 4(a) (i) of the Policy has been satisfied.

NO RIGHTS OR LEGITIMATE INTERESTS

As set forth by Paragraph 4 (c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent's rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to the Respondent of the dispute, its use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the Respondent (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent has not provided any evidence or circumstances to establish that he has rights or legitimate interests in the disputed domain name, according to Paragraph 4 (c) of the Policy.

On the contrary, the Respondent did not submit any response to the complaint.

This constitutes a clear acknowledgment that he has no right or legitimate interest in the disputed domain names.

There is nothing that indicates that the Respondent is commonly known as "Enterprise Car Shre," "Enterprise Share Car," or "WWWEnterprise Car Share."

The Complainant has not licensed or otherwise permitted the Respondent to use its ENTERPRISE CARSHARE trademarks in connection with car share services or any other goods or services or to apply for any domain name incorporating the ENTERPRISE CARSHARE trademarks.

In addition, there is no evidence that the Respondent makes a noncommercial and fair use of the disputed domain names without intention to divert consumers, as addressed under paragraph 4(c) (iii) of the Policy.

On the opposite, the Respondent makes an unfair and commercial use of the disputed domain names.
As alleged by the Complainant, the links provided on the parking pages are exclusively devoted to Car rental services and resolve to the Complainant's website as well as to its competitors 'websites.

Creating a misspelling of the ENTERPRISE CARSHARE trademarks, the Respondent aimed at diverting the internet users to its parking websites, to generate traffic and to benefit from pay per click revenues.

Accordingly, the Panel finds that the condition of Paragraph 4(a)(ii) of the Policy has been satisfied.

BAD FAITH

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by an Administrative Panel to be evidence of the bad faith registration and use of a domain name.

It provides that:

"For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the

trademark or service mark or to a competitor of that the Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

1. Concerning bad faith registration of the domain names <enterprisecarshre.com>, <enterprisesharecar.com>, and <wwwenterprisecarshare.com>

The trademarks ENTERPRISE CARSHARE are protected and used for designating car rental services.
Therefore, the Respondent was perfectly aware of the rights on the prior trademarks ENTERPRISE CARSHARE when registering the disputed domain names.

The disputed domain names <enterprisecarshre.com>, <enterprisesharecar.com>, and <wwwenterprisecarshare.com> have been registered on 21 October 2014, and are all three composed of variations on the trademarks ENTERPRISE CARSHARE.

This organized typo squatting practice show that the disputed domain names have been registered primarily for the purpose of capitalizing on the goodwill that has been developed by the Complainant in the ENTERPRISE CARSHARE trademarks.

2. Concerning bad faith use of the domain names <enterprisecarshre.com>, <enterprisesharecar.com>, and <wwwenterprisecarshare.com>

The Respondent's action is in line with Paragraph 4(b)(iv) of the Policy as the Respondent is intentionally attempting to attract Internet users for commercial gain to www.enterprisecarshre.com, www.enterprisesharecar.com, and www.wwwenterprisecarshare.com websites by creating a likelihood of confusion with Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of Respondent's website and services which are not in any way affiliated with the Complainant.

The Respondent obviously profits from pay-per-click revenue generated by the parking websites available from the domain names at issue, which constitutes commercial gain.

This is further evidence of Respondent's bad faith pursuant to Paragraph 4(b)(iv) of the Policy. See Asian World of Martial Arts Inc v. Texas International Property Associates, WIPO Case No. D2007-1415.

The Complainant has made a prima facie case that the disputed domain names have been registered and used in bad faith.

The Panel is of the opinion that there is ample evidence for a finding of bad faith in this case.

Therefore, the condition set out by Paragraph 4(a)(iii) of the Policy has been met by the Complainant.

PROCEDURAL FACTORS

Preliminary observations about the language of the procedure

The language of the Registration agreement is Chinese, but the Complainant requests the language of the administrative proceedings to be English. Generally, the language of the proceedings under the Policy should be the language of the domain name registration agreement subject to the authority of the Panel to determine otherwise.

In this respect, the Complainant claims (and submits evidence thereof) that the Respondent appears to be very familiar with the English language since the disputed domain names resolve to web sites which appear to have exclusively English content and all of the links on the web pages to which the disputed domain names resolve are in English. Accordingly, the Panel finds that in the circumstances of this case and pursuant to Paragraph 11(a) of the Rules the language of this administrative proceeding shall be English.

PRINCIPAL REASONS FOR THE DECISION

Likelihood of confusion between the ENTERPRISE CARSHARE trademarks and the disputed domain names which constitute typosquatting.

Absence of right or legitimate interest : no authorization, the Respondent is not known under the disputed domain names, commercial use of the disputed domain names to resolve to parking websites providing links to the Complainant's and to competitors' websites.

Bad faith registration: registration in the intent to monetize the disputed domain names.

Bad faith use: Respondent is intentionally attempting to attract Internet users for commercial gain to www.enterprisecarshre.com, www.enterprisesharecar.com, and www.wwwenterprisecarshare.com websites by creating a likelihood of confusion with Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of Respondent's website and services which are not in any way affiliated with the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **ENTERPRISECARSHRE.COM**: Transferred
2. **ENTERPRISESHARECAR.COM**: Transferred
3. **WWWENTERPRISECARSHARE.COM**: Transferred

PANELLISTS

Name	**Marie Marie-Emmanuelle Haas, Avocat**

DATE OF PANEL DECISION 2015-04-10

Publish the Decision